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EXHIBIT 811
DATE 2/21/07
HB 769

February 21, 2007
House Bill 769.
Testimony of Jim Smith

Good afternoon Chairman Jore and members of the House Education Committee. My name is Jim Smith. I am a lobbyist. I live in Helena, MT.

I am here today representing Mr. James Dorrian. Mr. Dorrian is a resident of California. He owns property in western Montana. Mr. Dorrian's son was a resident at an Outdoor Residential Program in Montana. As a result of that experience Mr. Dorrian became convinced that Private Alternative Adolescent Residential or Outdoor Programs ought to be licensed and regulated by the state of Montana. I agree with Mr. Dorrian.

We do not, however, support HB 769. Mr. Dorrian has written to Rep. Lake regarding HB 769 and I have included a copy of his letter with my testimony. I have included other letters to Rep. Lake. These are from child welfare specialists and program administrators outside of Montana who have a strong interest in this subject.

I have also prepared amendments to HB 769 that I believe will strengthen the licensure provisions contained in HB 769. These are also included with my testimony. I trust that you all will review those amendments; and I hope that one of you on this Committee will offer them in Executive Action on HB 769.

In our opinion HB 769 does not provide enough protection to the youths placed in these programs or assurances to their parents; it does not provide for adequate oversight of these programs; and therefore it creates heightened potential for undetected abuses and unsafe practices. Simply put, HB 769 does not go far enough in protecting the clients of youth residential and outdoor programs.

According to Ken Stettler, Director of the Utah Department of Human Services Office of Licensing: "Licensing is the process by which a government agency regulates the activities of an enterprise that involves the public interest."

We believe it is in the public interest—the interest of the people of the State of Montana—that youth residential outdoor programs be licensed, regulated, monitored and overseen by an independent licensure board. That board ought to have a majority of members on it who represent the public—not the programs themselves. HB 769 fails this test by leaving in place the existing PARRP board created in 2005. That is the most fatal flaw in HB 769.

The other major deficiency is in the definition of 'program' contained in HB 769. That definition is woefully inadequate in several regards; but mainly it leaves in place and intact the exemption from licensure for programs or schools that are religious or an adjunct of a church incorporated in the state of Montana. That's loophole big enough to drive a truck through.

We offer an amendment to better define 'program' and to eliminate the religious exemption current law that is continued in HB 769.

Unfortunately, we cannot offer a constructive amendment to deal with the size and composition of the licensure board because that Section is not addressed in HB 769. The proponents of HB 769 propose to leave the current five member board PARRP board as it is, to maintain a poor status quo on into the future. The current board is comprised of two members of the public and three members representing the programs being licensed. That's a big problem. The programs being licensed ought not hold the majority of seats on the licensing board. That's the very bottom line and the essence of our opposition to HB 769.

In conclusion you have an important policy choice before you. Please make the choice that is in the best interest of the public and not in the best interest of the programs supporting HB 769. Please table HB 769 here and now, in the House Education Committee.

As you all know, there is another bill that deals with the same issue. Senator Schmidt's SB 288 is the bill supported by my client. Included with my testimony is a list of individuals and organizations—including several of the youth outdoor residential programs in Montana that supported SB 288 when it was heard in the Senate Public Health, Safety and Welfare Committee on Feb. 9th.

I can assure you that Senator Schmidt and I are willing to work with the proponents of HB 769. In fact, we tried most of last week to find some common ground. I believe the proponents here today felt that they had to introduce HB 769; and I understand that. But, if HB 769 is tabled here it will bring those proponents back to the table with Senator Schmidt and she remains willing to listen to their concerns and to work with them.

If you believe there is a public interest being served by licensing these programs, then I think you would also want to support legislation that creates an independent, open, transparent licensing board that enjoys the full faith and confidence of the Montana public, the families involved and the youth who are residents of these programs.

Thank You for your time and I am available to answer any questions you may have.

February 21, 2007

Proposed Amendments to HB 769.
By Jim Smith

1. Title of Bill. Page 1, line 9. Strike '3.' Insert '2.'
2. Page 1, line 18. Strike '3.' Insert '2.'
3. Page 1, line 21. Strike 'without prior approval of the board.'
4. Page 1, line 25. Following 'modification.' Insert 'for good cause.'
5. Page 3, line 25. Following 'participants.' Insert "which may take into account the number of persons being housed in the structure and the internal configuration of the structure."
6. Page 4, line 3. Strike 'October 1, 2008.' Insert 'October 1, 2007.'
7. Page 4, line 5. Strike 'or board.'
8. Page 4, line 10. Strike 'or board.'
9. Page 4, line 12. Strike 'or board.'
10. Page 4, line 15. Strike '3.' Insert '2.'
11. Page 4, line 16. Strike 'or board.'
12. Page 4, line 16. Strike 'or board.'
13. Page 4, line 18. Insert 'Prior to renewal of a license, a program shall provide the board with evidence of certification as provided in subsection (3)(b) or shall request an onsite inspection.'
14. Page 4, line 16. Insert 'Inspections may be made without prior notice to the program.'
15. Page 5, line 3&4. Strike: 'Necessary licensure processes and safety standards for programs are best developed and monitored by the professionals that are actively engaged in providing private alternative adolescent residential care.'
16. Page 5, line 13 & 14. Strike definition of manager. Insert: "Manager" means an individual who exercises day-to-day supervision or control over the operations of a program.

17. Page 5, line 17 thru 28. Strike definition of 'program'. Insert: "Program" means a private alternative adolescent residential school or outdoor program that provides a structured, private, alternative residential setting for youth who are experiencing emotional, behavioral, or learning problems and who have a history of failing in academic, social, moral, or emotional development at home or in less-structured traditional settings 24-hour supervised group living environment for four or more individuals unrelated to the owner or manager. A program offers room or board and one or more additional services, including specialized treatment, behavior modification, rehabilitation, SECONDARY CARE OF CHEMICAL DEPENDENCY, discipline, emotional growth, or habilitation services for a program participant with emotional, psychological, developmental, or behavioral dysfunctions, OR impairments, or chemical dependency. The term may include but is not limited to the following schools or programs unless excluded under subsection (6)(b):

- (i) an outdoor behavioral program;
- (ii) a boarding school; or
- (iii) a residential program that represents that it provides supervision and structure for youth.

(b) The term does not include:

- (i) any school or program that is required to be licensed or regulated by the state under Title 50, 52, or 53; or

- (ii) recreational programs such as boy scouts, girl scouts, or 4-H clubs;

- (iii) organizations, boarding schools, or residential schools with a sole focus on academics;

- (iv) residential training or vocational programs with a sole focus on education and vocational training;

18. Page 6, line 20. Insert 'plan of operations' as defined in Sec. 8 of HB 769.

From: Jim Dorrian <jim@cpvp.com>
Subject: HB 769
Date: February 19, 2007 8:42:14 PM MST
To: <LAKEMILL@MONTANA.COM>, Trudi Schmidt <TRUDI@IN-TCH.COM>
Cc: <RICKJORE@HOTMAIL.COM>, <KOOPMAN@IMT.NET>, <REPRASER98@BRESNAN.NET>, <MBLASDEL@BRESNAN.NET>, <SENATORBUTCHER@AFTCO.NET>, <BCDC@DIGISYS.NET>, <IXOYE777@CENTURYTEL.NET>, <WSGRINDE@AOL.COM>, <ROBINLHAMILTON@BRESNAN.NET>, <MLANGE6@HOTMAIL.COM>, <HD84WARD@WMCONNECT.COM>, <FRANKE.WILMER@GMAIL.COM>

Dear Representative Lake,

I understand that you are sponsoring HB 769. I honor your efforts to help bring order to a currently chaotic situation in the state of Montana. I am writing this letter in the hope of both broadening and deepening your understanding of the issue from the point of view of the parents, and of the children who are affected by this legislation.

I believe I'm qualified to comment because my son was in a program in Montana for two years. Sadly, he was in a program that serves as an indictment of the current state of affairs in Montana. Rather than belabor that point in this letter, I'm sending to you, separately, a formal complaint that was filed by myself and two other parents with the Department of Labor last year. I should mention that the silence was deafening. It is time for change. I urge you to read the document carefully because the program operator that we complained about is not just representative of what is wrong with an industry that lacks oversight; he is a major mover and shaker behind the forces that are urging you to advance their interests.

If there is one point I would like to crystallize, it is that far too many children end up in programs in Montana without any effective due diligence by their parents. It is not the parents' fault. It is a simple reality given the circumstances. Parents of a child in a precipitous decline into drugs or other dysfunctional behavior make precipitous decisions. And decisions made in a panic often have disastrous consequences.

A quick look at the teen help industry is useful. There are two layers. There are the program's themselves. And there is the educational consulting industry, which funnels children into the programs. This sad truth is that many of these educational consultants take finder fees from the programs. I have been unable to ascertain in my case whether the educational consultant I used took a referral fee from the program, but she did later admit that she had never even visited the program.

I put my faith in a consultant and the next thing I knew my son was in a program I knew almost nothing about. I am not unique. I do not regret the intervention into my son's life, but I am burdened by the knowledge that my son fell into a system that allows unqualified, predatory people to operate with impunity in the state of Montana. I do not mean to insult you. I love Montana and have met wonderful people there and I'm deeply impressed by some of the programs like Montana Academy, Chrysalis, Hope Ranch, Summit, Explorations, and

others.

The bottom line is that *caveat emptor* is a bridge too far in the case of teens and families in deep distress. It is too late for the state to step in with Child Protective Services after the fact. Montana, like nearly every other state, must have legitimate oversight and licensing. I spent well over one hundred thousand dollars to have my son in a program in Montana. I have never sweated that for an instant. But two years of my son's life were lost. I can't give it back to him, and I can no longer exercise parental authority to get him engaged in the type of appropriate therapy that was called for in the first place. He is past eighteen and my rights have evaporated. There is a very good chance that it all could have been avoided had the State been a trusted gatekeeper on programs like the one my son attended.

I'd like to spend a moment and talk about legitimate oversight. I have served on many public and private boards for nearly twenty years. There are stories of spectacular failures by boards and those stories are very public. But I know that the great majority of boards take their responsibilities seriously and pay assiduous attention to the rights of all the constituent interests: shareholders, management, employees, and the community at large. That is their job.

It is simply inconceivable that management would hold a majority of the seats on any board in the private sector. In the vast majority of cases, only the CEO has a board seat. It works very well. Indeed, when management wants the board to act, it is logic and the eloquence of dispassionate argument that carries the day. It is never by a vote dealt from a stacked deck. Why should a vote by self-interested parties carry the day if persuasion and logic cannot?

While the bill you are sponsoring has excellent elements, it leaves intact the heavy hand of self-interested program operators controlling the board. From a parent's point of view that is completely unacceptable. Some of the program operators argue that other boards in Montana have a majority of the seats controlled by people from the industry in question. That is simply a non sequitur. Newton's equations perfectly described gravity. Those equations were also perfectly wrong.

The care of distressed teens transcends construction, plumbing, and husbandry. Children are not chattel. No society can survive that does not protect and nurture its young. If a child had a traumatic injury or a bacterial disease, their protection in Montana would be assured. If their injury is spiritual do they deserve any less protection?

I urge you to consider working with Senator Schmidt and align your bills so that there is legitimate, independent, and reliable oversight in Montana. It goes without saying that some of the programs operating in Montana will not survive legitimate oversight. That is a good thing. The rest of the herd will be healthier and the children will be safer.

Very sincerely yours,

James Dorrian

Feb 20, 2007

Dear Representative Lake

I am using this opportunity to communicate with you regarding HB769 and SB288. I appreciate the interest you have shown in the provision of residential treatment for children and youth, and would like to urge you to support SB288.

I too am writing to you from the perspective of someone who doesn't live or work in Montana. I am currently Public Policy Chair and a past President of the American Association of Children's Residential Centers, the longest-standing national association focused specifically on the clinical and programmatic issues related to providing treatment in 24 hour out of home group settings to children and youth with mental and behavioral disorders and their families.

AACRC is known for its leadership on these types of issues and has recently disseminated two papers related to evolving roles and practices for residential facilities. It was also instrumental in helping to organize the national Building Bridges initiative, which is designed to stimulate improvements in the linkages between residential and community services and the creation of more effective and efficient delivery systems for children and families in communities throughout America. AACRC requires licensure of its members and is now near completion of a third paper related to licensure and accreditation. I am attaching copies of the first already issued documents and the Building Bridges resolution. I can make the third paper available following approval by our Board of Directors, which I hope will be forthcoming in the next two weeks.

I also write from the perspective of one who has worked in residential treatment for 33 years, 18 of them as CEO of a small rural psychiatric treatment facility. From this perspective, I can say that licensure (and accreditation) has helped us to stay viable clinically as well as financially and given us the framework from which to make many innovations over the years that have improved the quality and outcomes of our services, as shown by the data we collect from and about our clients and their families.

I don't need to repeat the reasons for supporting SB288. They are referenced below and implied by the documents you have been sent. I am available to discuss this issue with you at your convenience. Please feel free to contact me via e-mail or on the phone. My number is

541-956-4943, ext.1117. Again thank you for your interest in this most important issue.

Sincerely,
Bob Lieberman

Robert E. Lieberman, M.A., LPC

Feb 19, 2007

To: Senator Trudi Schmidt.
Fr: Jim Smith

Re: Proponents for SB 288 at the Feb. 9th Hearing in Senate Public Health, Safety and Welfare Committee.

Per your request. For privacy reasons, I am not including the names of the resident youth from the various programs who appeared and testified in support of SB 288. I may have missed a person or two?

1. Jim Smith, Representing James Dorrian, a parent.
2. Ken Stettler, Director of the Office of Licensing, Utah Department of Human Services.
3. Keith Kelly, Montana Department of Labor & Industry.
4. Steve Gibson, Montana Department of Corrections.
5. Bob Runkel, Office of Public Instruction.
6. Melissa Case, MEA/MFT.
7. Donald Harr, MD, Montana Psychiatric Association.
8. Pat Davis, Ph. D., Montana Psychological Association.
9. Mike McLaughlin, Montana Council of Community Mental Health Centers.
10. Tracy Valesquez, Mental Health Association of Montana
11. Mary McCue, National Association of Social Workers—Montana Chapter; and the Montana Association of Licensed Professional Clinical Counselors.
12. Beth Brennehan, Montana Advocacy Program.
13. Jani McCall, Montana Children's Initiative; and Billings Deaconess Clinic.
14. Curt Chisholm, National Alliance for the Mentally Ill.
15. Sami Butler, Intermountain Children's Home, Helena, Montana.
16. Russ Davis, Parent, Great Falls, Montana.
17. Jim Dorrian, Parent, Los Altos Hills, California.
18. Sheriff Cheryl Liedle, Montana Sheriffs and Peace Officers Association; and the Montana County Attorneys Association
19. JoNell McFadden, Mental Health Advocate.
20. Bob Smith, School Psychologist, Eureka, Montana.
21. Mike Linderman, Licensed Clinical Professional Counselor, Whispering Pines Academy, Thompson Falls, Montana.
22. Kenny Panell, Chrysalis Academy, Eureka, Montana.
23. Linda & Jim Carpenter, Hope Ranch, Whitefish, Montana.
24. John Mercer, Mission Mountain School, Condon, Montana.
25. Jan Johnson, Summit, Kalispell, Montana.
26. Penny James, Explorations, ??, Montana
27. Tim Corson, Montana Academy.